

REMARKS

Applicants submit this Reply in response to the final Office Action mailed September 13, 2007, and concurrently with a Request for Continued Examination pursuant to 37 C.F.R. § 1.114. Claims 1, 2, 4-6, and 8-10 are currently pending, of which claims 1, 5, 9, and 10 are independent. In this response, Applicants have amended each of the independent claims 1, 5, 9, and 10.

In the final Office Action dated September 13, 2007, the Examiner provisionally rejected claims 1, 2, 5, 6, 9, and 10 on the ground of non-statutory obviousness-type double patenting in view of co-pending U.S. Patent Application Serial No. 10/721,348. The Examiner also rejected claims 1, 5, 9, and 10 under 35 U.S.C. § 112, ¶ 2 as being indefinite and further rejected claim 10 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Finally, the Examiner rejected claims 1, 2, 4-6, and 8-10 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0233523 ("Jamil"). Applicants respectfully traverse these rejections, for at least the reasons set forth below.

Double Patenting Rejections

Each of the independent claims 1, 5, 9, and 10 was provisionally rejected on the basis of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 24, and 56 of co-pending U.S. Patent Application Serial No. 10/721,348. In response, Applicants submit the enclosed Terminal Disclaimer, thereby obviating the pending provisional double-patenting rejections.

35 U.S.C. § 112, ¶ 2 Rejections

The Examiner rejected independent claims 1, 5, 9, and 10 under 35 U.S.C. § 112, ¶ 2 on the basis that “the phrase ‘one or more data object processing operations’, renders the claim indefinite because it is unclear which ‘one or more data object processing operations’ can access the electronic data element.” Final Office Action dated September 13, 2007, p. 5. Applicants have amended each of the independent claims 1, 5, 9, and 10 to remove the phrase “one or more data object processing operations,” thereby obviating the pending Section 112 rejections.

35 U.S.C. § 101 Rejections

Claim 10 was rejected under 35 U.S.C. § 101 because:

Claim 10 is directed towards a computer readable medium or a propagated signal. As such, the claim is drawn to a form of energy. Forms of energy do not fall within a statutory category since they are clearly not a series of steps or acts to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

Final Office Action dated September 13, 2007, p. 6.

Independent claim 10, as presently amended, recites, among other things, a “computer-readable medium storing instructions for execution by a processor, the instructions when executed by the processor for performing a method of replicating data objects . . .” Applicants respectfully submit that the computer-readable medium recited in claim 10 complies with the statutory requirements of Section 101.

It is well established that “a claimed computer-readable medium encoded with a computer program” is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which

permit the computer program's functionality to be realized, and is thus statutory."

M.P.E.P. § 2106.01(l) (emphasis added). Moreover, "[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." M.P.E.P. § 2106.01.

For at least the reasons set forth in M.P.E.P. § 2106.01, the "computer-readable medium storing instructions for execution by a processor . . . ," as recited in amended independent claim 10, comprises a tangible, functional element that is not merely drawn to a form of energy and is statutory in accordance with 35 U.S.C. § 101.

35 U.S.C. § 102(e) Rejections

On October 12, 2007, Applicants undersigned representative and the Examiner generally discussed the pending claim rejections over Jamil. In that discussion, the Examiner suggested that the claims pending before this amendment were too general in their "processing" steps. More specifically, the Examiner believed that the claims needed to better distinguish their "replication" functionality from general data-object processing (reading, modifying, etc.). For example, the claim term "data object processing operations" was rejected under Section 112 as being indefinite in the final Office Action. See Office Action dated September 13, 2007, p. 5; *see also, supra*.

Applicants prepared proposed claim amendments to address the Examiner's concerns. After considering these proposed claim amendments, the Examiner indicated that the proposed amendments would overcome the pending rejections over Jamil, and further indicated that an updated search would need to be conducted. In this response,

Applicants have amended each of the independent claims 1, 5, 9, and 10 to incorporate the same subject matter contained in the proposed amendments that the Examiner indicated would distinguish Jamil. For instance, the present amendments remove the term “data object processing operations” and clarify the difference between the claimed “one or more data-object replication processes” and the claimed “software processes other than the one or more data-object replication processes.”

Accordingly, Applicants respectfully submit that independent claims 1, 5, 9, and 10, as presently amended, are allowable over the art of record. Dependent claims 2, 4, 6, and 8 depend on allowable independent claims 1 or 5 and are therefore allowable for at least the same reasons.

Conclusion

The preceding remarks are based only on the arguments in the Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding remarks in favor of patentability is advanced without prejudice to other possible bases of patentability.


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Application Serial No.: 10/721,898
Attorney Docket No.: 07781.0118-00000
SAP Reference No. 2002P10103US01

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Dated: October 31, 2007

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